

DISPUTE RESOLUTION SYSTEM FUNCTIONS AND ACTIVITIES

FROM AN ANALYSIS OF SELECTED FFY 2006 Annual Performance Report Indicators 16, 17, 18 and 19

Prepared by CADRE

Richard Zeller, Anita Pierce, Aimee Taylor, Phil Moses, Pamela Kraynak,
Marshall Peter, John Reiman

INTRODUCTION

This document is based on a summary and analysis of selected FFY 2006 State Annual Performance Reports (APRs) for the dispute resolution indicators under Part B. These include:

- Indicator 16: Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint.
- Indicator 17: Percent of fully adjudicated due process hearing requests that were fully adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party.
- Indicator 18: Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.
- Indicator 19: Percent of mediations held that resulted in mediation agreements.

This chapter employed a unique method of summary and analysis and, thus, will likely differ from the chapters prepared for other indicators. Not all states were reviewed. We examined the APRs and web sites of 23 states selected for this analysis. Three performance levels were considered: (1) states that consistently maintained compliance and performance; (2) states that substantially improved compliance and performance; and (3) states that have struggled over the past three or four years to reach compliance or an acceptable level of performance. Using this approach, we hoped to be able to distinguish activities and improvement strategies by level of performance.

The audiences for this document are state dispute resolution system managers, coordinators of individual dispute resolution processes (hearing, complaint or mediation systems), dispute resolution practitioners (complaint investigators, hearing officers [HOs], mediators, alternative dispute resolution specialists), and stakeholders involved in dispute resolution system improvement efforts. The objective of this chapter is to provide a descriptive and, to some extent, prescriptive analysis:

To describe, as fully as possible, the kinds of activities states undertake in order to effectively manage dispute resolution systems.

In this chapter we address concepts underlying the approach to the analysis and then present findings in a detailed description of activities that states undertake in order to

operate capable dispute resolution systems. An explanation of the methodology, context issues in describing differences in state activities, and limitations of the data are included in Appendix A at the end of the chapter for the interested reader.

KEY CONCEPTS

Describing System Functions and Activities v. Improvement Strategies

States are asked to describe in their APRs the “improvement strategies” they undertake to maintain or improve their performance in the various indicator areas. Most states do not fully describe the operations of their systems in their APRs but rather describe where they are concentrating effort to improve. As a result, most APRs provide only a partial view of how dispute resolution systems function overall. “What’s working well” for many states may go unreported, or may be alluded to in describing completed activities or in explanations of progress.

In reviewing the selected sample of state APRs and preparing this chapter, CADRE adapted the “improvement strategy taxonomy” and definitions provided by OSEP and added three functions: Public Awareness/Outreach, Upstream or Early Resolution Processes, and Stakeholder Involvement. Our premise is that a state operating a dispute resolution system will, of necessity, have activities that address each of these basic “functions:”

- A. Data collection and reporting
- B. Systems administration and monitoring
- C. Systems and infrastructures for technical assistance and support
- D. Technical assistance/training/professional development
- E. Clarification/examination/development of policies and procedures
- F. Program development
- G. Collaboration/coordination
- H. Evaluation
- I. Increases or Adjustments to FTE
- J. Public Awareness/Outreach
- K. Upstream or Early Resolution Processes
- L. Stakeholder Involvement

This summary, then, attempts to detail the kinds of activities that seem to be currently performed by states in carrying out these functions. Clearly, the activities undertaken by the states with the most and least dispute resolution activity will differ substantially, even though a given event (e.g., a written state complaint investigation and report) may be an essentially similar activity in any state. The activity descriptions provided (see below) for each function reflect some but not all of these contextual differences. We hope we have captured a fairly complete description of the range of activities states must undertake in order to operate an effective dispute resolution system.

FINDINGS:

In the overall analysis, the kinds of improvement activities states describe do not differ between states that achieved compliance and performed well and those that did not perform well or did not meet compliance standards, except that:

- Most lower performing states or states that have not achieved compliance tended to write more than other states about what they were doing to improve that indicator, and
- These states tended to be doing or planning to do many of the same kinds of things that states meeting compliance describe.

In order to offer useful guidance about what states can do to operate effective systems, we have extracted as much detail as we could about each activity type, describing what states say they do or seem to be doing. Clearly, not every state does the same things, but there are activities common to each of the 12 functions that seem to be fairly standard. Some activities described reflect an aggregate description of what two or more states said about a particular kind of activity. In other cases, we include activities that some states pursue that other states do not and would not undertake (e.g., collecting mediation agreements, having the hearing officer review any resolution agreement). We include both what we think is essential and what may be more a matter of state orientation to general supervision and local control.

Activities Necessary to the Functions of a State Dispute Resolution (DR) System – Beginning Description

Identifying the broad categories of activity (functions of a dispute resolution system) was a meaningful step in understanding how state systems function. The following detailed description of activities within each function is a first attempt at specifying the activities and processes of an effective state dispute resolution system. We hope this summary can serve to stimulate discussions among system managers, practitioners and stakeholders about how these systems can be made more effective in promoting better parent/school decision-making and, when needed, effective and durable dispute resolution.

These activity descriptions, arranged by the 12 identified “functions” of a dispute resolution system, are based on CADRE’s review of APRs and the examination of the state web sites. Each function is listed below, with a brief definition in parentheses following. For each function, detailed activities are described. For some functions, sub-functions are offered and then activities. The activities may include those that, at a minimum, are necessary for compliance and/or basic system operation, as well as activities that may contribute to compliance and capable system performance.

Function A. Data Collection and Reporting

(Definition: Ensure accurate data collection in order to monitor, manage and report on dispute resolution activities.)

The degree to which a state invests in computer-based data collection and process tracking should be related to the level of activity being managed. In states with relatively few complaints and hearing requests, a paper checklist system or simple spreadsheet may suffice. In states with more activity, more complex systems are likely justified. The descriptions below begin with the activities that a data system could support, after which we describe two sub-functions and the activities related to the automation and integration of these systems:

- **Minimum data collection activity.** A method for compiling data that satisfies the APR data reporting requirements (Table 7). These data will not suffice to manage timeliness of complaints and hearings and some other issues related to dispute resolution.
- **Emerging Practice: Integrated data systems.** About half the states reviewed discuss integrating complaints, hearings, mediation and other dispute resolution data systems with data collection for Indicator 15 (system of general supervision). States have built (or are building) these integrated systems within idiosyncratic state data management systems; the software, then, is probably not easily transportable across states. States integrate these data functions for two reasons: dispute resolution options are used by many of the same people over time to address the same or similar issues, and general supervision/monitoring is informed by the aggregation of issues confronting LEAs through formal and informal dispute resolution mechanisms.

Sub-Function A1. Collect Data to Support Timelines Management

Sensitive and capable management of timely and effective system performance can be enhanced when states can track a reasonable number of process steps in mediation, written complaints and due process hearings. The appropriate *level of detail* to track is that which will be sufficient to allow monitoring, individual correction of process slippage and the use of historical data in systems improvement efforts. Data systems can be designed to both generate expected dates for completion of various activities based on the date the DR process was initiated, as well as serve to document the actual dates of the activity for each case.

- **Data on the Timeliness of Complaints** – Many States describe *tickler systems* for monitoring complaint activity. In some cases, this means simply “notify the investigator” ten days prior to the report due date. Other states include more complaints process “milestones,” such as dates for: receipt of the complaint; assignment of investigator; initial contact with complainant/school; investigative material submitted; extension granted to specific date if applicable; completion of draft report; review of report; and final approval of report.

- **Data on the Timeliness of Due Process (DP) Hearings and Resolution Meetings/Agreements** – States also describe tickler or *docket management systems* for hearing activity “milestones” such as dates for: DP complaint filing; receiving party response; hearing officer (HO) assigned; insufficiency claim filed; resolution meeting period; resolution process period ends; resolution settlement agreement; other settlement agreement; timeline suspended for mediation; hearing scheduled; submission of evidence prior to hearing; conduct hearing; extension to specific date, if applicable; HO writes decision; decision review process; issue final decision (end hearing timeline); redact and publish decision. Some systems account for additional data elements for expedited hearings. Some states with higher levels of activity update their docket systems daily.
- **Manage business and calendar day differences.** Tracking systems may need to manage differences between calendar days and business days in order for tickler systems to be effective (e.g., earlier review periods for complaints if due dates fall on or near weekends, holidays).
- **Track corrective action/decision implementation monitoring.** For example, the timeline for implementation; compliance achieved; noncompliance sanctions; satisfaction of parties with the resolution (after implementation, follow-up 6 months/one year).

Sub-Function A2. Collect Data to Support Management of Overall System Effectiveness

States differ on what they consider system effectiveness, but there are similarities in the kinds of information states collect that go beyond the required section 618 data (Table 7) and timelines management issues. These may include: dispute issues content; participant identifiers; participant characteristics; agreement/resolution details (resolved issues; services/conditions agreed to, etc.) related to written complaints, mediations, and due process hearings. Information of this type may contribute to effective monitoring of system performance, assurance of corrective action/hearing officer decision implementation, identification of needed LEA improvements, and overall improved DR system performance.

- **Track issues raised in complaints, due process.** Collect data using a uniform taxonomy of issues across all dispute resolution functions as well as Indicator 15, system of general supervision.
- **Track other information.** For example, relief requested in complaint/hearing filing; reasons for extensions; parent/student identifying information; attorneys involved; party prevailing by issue.
- **Collect data on resolution sessions.** Issues raised and issues addressed in settlement agreements; nature of settlement agreement; other resolutions/means by which achieved (e.g., tracking subsets of “resolved without a hearing,” especially where Indicator 18, resolution settlement agreement rate, is low).
- **Collect mediation specific data.** Progress of mediation (e.g., dates for filing; scheduling mediation; mediator assignment; resolution/agreement; case closure); issues addressed; relation to due process/written complaint; who participates; written agreement content; unresolved issues.

Function B. Systems Administration and Monitoring

(Definition: Administer and manage dispute resolution systems. Carry out dispute resolution process monitoring, including continuous improvement and focused monitoring.)

Administration involves at least: (1) standard setting for practice and performance; (2) monitoring of actual practice and performance; and (3) adjusting resources and activities to improve system performance with respect to standards. These “sub-functions” of administration are present in differing levels across states. Data collection systems that provide performance information related to standards are critical to effective management and monitoring.

- **Minimum systems administration activity.** Track and oversee the implementation of dispute resolution procedures required to ensure compliance and performance (written complaints, mediation, due process complaints, and resolution meetings).
- **Monitor complaint corrective actions and hearing officer decision implementation.** Ensure that corrective actions and decisions requiring change in noncompliant practice are fully corrected/implemented in not more than one year (or less, if specified in the report or hearing decision).
- **Emerging practices: Overall DR System Coordination.** Increasingly, states are assigning a system administrator/coordinator/supervisor (or in some cases a coordinating team) with broad responsibility for all types of dispute resolution activity. State size and the level of dispute resolution activity are key variables in how system oversight is provided.
- **Emerging practices: One tier hearing systems operated by a State Office of Administrative Hearings.** States are moving away from two tiers to one tier due process hearing systems and many are using (by design or directive) an office of administrative hearings (OAH) to conduct due process hearings. For states where an OAH system conducts hearings, a clear memorandum of agreement appears to be essential to communicate the importance of timely hearings and other IDEA standards.

Sub-Function B1. Set Standards for Practice and Performance

States provide little detail, in most cases, about performance standards beyond the targets set for APR indicators. Some states hint at or imply specific standards for some activities; where these standards are explicit they reveal meaningful differences in standards across states. How standards are set impacts data collection and will depend on context variables within the state (e.g., levels of review before a final report or decision is issued, reconsideration of complaint reports). Examples from various APRs where standards were set or implied:

- **Standards for completing key milestones within the 60-day complaints timeline.** Contact parties within one business day of filing; encourage local

resolution through day 10; request additional input from the parties by day 12; receive additional information by day 25; complete investigation by day 33; complete first draft reports by day 35; final report for signature and delivery by day 45. States with complaint reconsideration systems may produce initial reports earlier (e.g., within 30 days of filing) so that reviews can be completed within a total of 60 days.

- **Standards for granting complaint extensions.** These may include reasons for extension (e.g., exceptional weather inhibited investigation, exceptionally complex cases) and limits on the number of extensions (e.g., one 30 day extension allowed).
- **Standards for completing key milestones within the 30-day resolution period.** Assign hearing officer to monitor resolution process on day 1; HO communicates resolution process details to participants by day 3; contact LEA by day 9 to determine if resolution meeting is scheduled; contact district at day 15 to determine whether resolution meeting was held; contact parties by day 28 to assess status of settlement efforts; confirm hearing process timeline starts at day 30.
- **Standards for completing due process hearings.** States differ widely on whether they have any standards beyond the 45 day timeline. Some states require the hearing schedule to be set within 5 days of filing and to occur no later than day 20 so that the final decision can be written and reviewed by a chief administrative judge or panel prior to final release by day 45. It appears that more detailed timeline standards contribute to timely hearing performance: clear guidance about the 45 day timeline; limits on and documentation of the reasons for any extension; hearing decision draft due dates; oversight of hearing officer performance by a chief administrative judge or supervising entity.
- **Other dispute resolution system standards.** In addition to required targets for each indicator, some states adopted other standards to contribute to improved timeliness, or to move conflicts from more adversarial to less adversarial resolution processes. Examples include:
 - **Improving compliance.** Limit the use of extensions in complaint investigations or hearings by providing guidance that ensures that extensions are only allowed under exceptional circumstances per IDEA regulations.
 - **Improving performance.** Increase the use of mediation in lieu of resolution meetings to 50% of hearing requests; set agreement rate target ranges for mediation (e.g., 70%-85%) and resolution agreements (40%-50%) rather than adopting continuing growth targets; increase use of mediation in lieu of resolution meetings to 50% of cases.

Sub-Function B2. Monitor Actual Practice and Performance

States do not uniformly describe monitoring of DR systems. Some states describe more team oriented approaches to support DR practitioners, while others rely on supervisory oversight. Examples of activities that may help ensure timely and capable system performance:

- **Tickler systems.** Some data systems produce reminders to supervisors and dispute resolution practitioners (complaint investigators, hearing officers, mediators) of critical milestone dates. (CADRE sees the challenge as applying the standards to particular cases to create actionable information for participants.) A common calendar is used in some states for this purpose (all cases, due dates, etc., listed). One state described a common electronic calendar system that automatically added dated reminders for specific cases to supervisor and hearing officer or complaint investigator calendars.
- **Regular staff/team support meetings.** DR supervisors or complaint supervisors meet with complaints staff to: review status of complaints; problem solve; provide technical support; sharpen investigative questions; review findings/draft reports.
- **DR supervisor (complaints manager, hearings manager) monitors individual cases.** Meets with individual investigators or HOs to review status; provides feedback; assists in meeting timelines; reviews/approves extensions.
- **Review and approve draft reports.** Complaints managers, hearings system managers, presiding judges or review panels read, critique and in some cases approve final complaint reports or hearing decisions. These individual or team reviews can add uniformity to reports or decisions. Additional levels of review (in some states several levels) can make timeline management difficult.
- **Monitor mediation processes and results.** Collect information on: mediation processes; mediation progress and timelines (e.g., when in lieu of resolution meeting or related to due process, as well as when not related to due process); outcomes of mediation; copies of agreements; satisfaction of participants.

Sub-Function B2. Adjust Resources and Activities to Improve System Administration

Several states mention the role of the DR system manager as focusing on the “big picture,” ensuring that systems are current and capable through interactions with other states, and national leadership training (e.g., through LRP, CADRE, RRCs). DR managers bring information back to practitioners. Examples of changes in practice based on state monitoring, examination and analysis of performance issues by DR process include:

Complaint Systems. Many states mention supports for improving complaint processing to help meet timelines and improve the quality of reports. Examples of adjustments to administrative activities in complaints systems include:

- **Streamline intake, processing, and approval of complaints.** On-line forms specify required information, clear guidance to parents on how to file, assignment of an investigator/point of contact upon filing, completing draft reports well before the timeline expires (e.g., by day 35); decreasing the number of review/approval steps (e.g., reviewed by DR process manager and signed by the SEA director v. reviewed and signed at multiple levels).
- **Encourage early resolution.** Many states describe an initial period (e.g., 10 days) during which parents and schools are encouraged to resolve the basis for the written complaint. The degree to which the reasons for complaint withdrawal are

reviewed differs from no review to data collection on issues resolved and how they were resolved. Some states are considering “durability” to be the critical attribute of successful dispute resolution.

Hearings Systems. More states seem to be moving toward single tier hearings systems managed by State Offices of Administrative Hearings (OAH). Potential benefits include: better trained and skilled Administrative Law Judges (ALJs) as hearing officers who have focused experience and daily support for conducting/managing hearings. Potential disadvantages include: some ALJs may lack IDEA and special education knowledge, and independent OAH systems may not be responsive to IDEA timelines issues. Some states directly supervise or contract hearing system operation. Larger systems tend to have a dedicated hearings system manager in the SEA. These kinds of structural differences may be dictated by state policy and not under the control of the Special Education Division. Example adjustments to administrative activities for hearings systems:

- **Interagency agreements to ensure timeliness.** For example, when hearings are contracted to another organization or conducted by OAH system, these agreements may provide strict requirements for timeliness, selection, training and evaluation of HOs.
- **Direct funding of hearing officers.** In larger states with OAH systems, SEAs may fund one or more dedicated hearing officers who specialize in special education hearings.
- **Strict HO contractual conditions.** In states where HOs are directly supervised by the SEA, set conditions for HOs may include requirements for timeliness, education, experience, training and evaluation, sanctions for failure to meet timelines, quality of decisions (e.g., effectiveness of implementation, overturned on appeal), or for overuse of or failure to document reasons for extensions.

Resolution Meeting Process. States differ widely in how resolution processes are managed and by whom. In some states, the LEA is left to manage the resolution process with minimal regulation or guidance, with the hearing officer appointed when the hearing timeline begins. In other states, SEA staff or a hearing officer monitors the resolution process. Examples of adjustments to administrative activities for resolution systems:

- **Resolution manager assigned when a due process complaint is filed.** In some states, the hearing officer communicates with the parents and school; monitors the resolution meeting process; encourages resolution. The advantage may be that the HO has more knowledge of the case if the resolution process fails.
- **Review of settlement agreements.** IDEA provides that settlement agreements are enforceable in court, but no mention is made of any review of agreements prior to their execution. Some states have the assigned Hearing Officer review any settlement or mediation agreement that results in withdrawal of the hearing request.
- **Conduct analyses of “resolved without a hearing” cases.** Many hearings are resolved without going to due process after the 30-day resolution process ends, through formal settlement negotiations between attorneys, or mediation, or other

means. Some states report that “resolution meetings” and “resolution agreements” cover a wide range of possible formats – not all of which would meet the section 618 data reporting requirements. Some states are finding benefit in examining this larger “resolved” category to determine conditions that may assist resolution of certain types of cases.

Mediation System. States may directly operate mediation systems (state panels managed by an SEA mediation coordinator) or may contract with a mediation organization (private, community-based, or University mediation program). These different arrangements impact how activities are managed and by whom, but they do not change the basic functions. Examples of adjustments to administrative activities in mediation include:

- **Review mediation agreements and their implementation.** Collect, retain for 6 months, and confirm agreement implementation with participants (SEA takes action only at request of a party to the agreement). The organizational value stated is to assess whether mediation agreements work and to ensure that they make a difference.
- **Adjust mediation processes and results.** Examine data collected on mediation processes, mediation progress and timelines (e.g., when in lieu of resolution meeting or related to due process, as well as when not so related), outcomes of mediation, copies of agreements, satisfaction of participants; identify what is working well and share with mediators/participants.
- **Use other states’ data to benchmark performance for state systems.** One state reported using benchmarking to help set goals for increasing the use of mediation prior to filing a due process complaint.

Function C. Systems and Infrastructures for Technical Assistance (TA) and Support

(Definition: Develop and maintain Statewide or regional infrastructures to maximize resources.)

States report little about infrastructure and TA system development. They do note capacities or resources they have put in place to support DR practitioners and participants in effectively using various dispute resolution practices. Minimum TA infrastructure activity should ensure sufficient information and support to dispute resolution practitioners and participants so that effective dispute resolution can be realized. Examples of system and infrastructure activities include:

Sub-Function C1. Provide Support for Participants in Disputes

- **Develop and publish materials for LEAs/parents to learn about dispute resolution options.** Types of materials published and disseminated may include information on:
 - Procedural safeguards brochures (required information);

- Parent-friendly descriptions of required dispute resolution options, what to expect from the various processes (timelines, participants, control of outcomes);
- Documents on alternative dispute resolution (ADR) options from “basic tips for communicating with your school” to descriptions of other processes of dispute resolution (e.g., IEP facilitation, parent-to-parent guidance).
- **Offer web-based systems for LEAs/parents to learn about dispute resolution options.** The quality and accessibility of state web sites vary widely. In the most impressive designs, access to “dispute resolution” is very clear from the front page of the state’s special education web site. The “dispute resolution home page” contains an overview of options, with emphasis on collaborative problem-solving prior to taking formal action. All options are clearly identified, described, and forms are provided for initiating action. Access to other supporting resources for parents (e.g., PTIs) is also clearly listed. Special Education Divisions often do not have much control over the form or content of their web pages because of larger state policy issues. In some cases, states have contracted with other organizations for web-based presentation of DR information to ensure control over its presentation.
- **Encourage and support upstream activities to reduce demand on formal processes.** These may include skills training modules online or through PTIs for parents and schools. (See Function D, TA/Training/Professional Development.)

Sub-Function C2. Provide Support for DR Practitioners

- **LRP and/or other legal databases subscriptions.** To ensure that investigators and hearing officers have access to current legal resource information.
- **Make legal counsel available for complaint investigators.** While most states use attorneys/ALJs for conducting hearings, complaint investigators are often not attorneys and may lack the deep legal expertise needed to deal with some issues. Some states have in-house or contracted attorneys on call to provide such counsel.
- **Maintain practitioner ListSerts.** Some states maintain specialized ListSerts to connect investigators or hearing officers to one another for sharing problems and solutions.
- **Develop “Desktop Manuals” for complaint investigators and due process hearing officers.** Paper and on-line systems provide resources to make investigation or hearing conduct and reporting processes more efficient: clear outlines of investigation or hearing timelines, processes and responsibilities, standard forms and communication protocols, data tracking, report/written decision formats, etc. One state noted the on-line availability of an “extension calculator” (presumably designed to limit extensions to those meeting state standards).
- **Connect DR practitioners to out-of-state resources.** Many states mention connecting their dispute resolution practitioners to resources outside their states, such as to LRP (annual conference and subscription service), CADRE (symposia, web-site, ListSerts), RRC regional workgroups, and other private organizations with legal resources/expertise.

Sub-Function C3. Provide Support for LEAs/Districts

- **Target and support districts with compliance problems.** Identify LEAs with high levels of repeated complaints with findings of noncompliance and/or with repeated hearing decisions favoring parents. Provide intensive TA/intervention to improve program quality, capacity to provide FAPE, and improve parent/school collaboration.
- **Provide web-based TA/guidance for LEAs.** Maintain web sites with resources especially for LEAs on dispute resolution and conflict prevention.
- **Establish compliance agreement procedures.** For LEAs with persistent non-compliance problems identified through dispute resolution activities, some states document needed improvement activities, correction timelines, etc., in a written compliance agreement that may include sanctions for the LEA's failure to implement.

Function D. Technical Assistance/Training/Professional Development

(Definition: Provide TA to State, LEAs and/or service agencies, families and/or other stakeholders on effective practices and programs in dispute resolution.)

States reference training and technical assistance activities more than any other of the 12 function areas used for this summary. Training for practitioners typically focuses on understanding the legal requirements of the DR process, IDEA regulations/precedents, and effective process management. Participant training often is awareness level (about specific DR processes) or may emphasize skill development (listening, negotiation, collaborative decision-making, IEP development). This section addresses training/TA content, process of delivery and, where available, a sense of the length of typical training interventions. Examples of these activities are organized by practitioners and participants:

Sub-Function D1. Complaint Investigator Training/TA

- **Needs Assessment.** DR Coordinator or complaints system manager determines training/TA needs (not much detail reported on methodology beyond identifying areas where investigators express needs).
- **Complaint investigator training/TA content.** Legal standards (IDEA regulations, case law), complaint investigation process (especially for new investigators), investigatory procedures, interviewing techniques, drawing conclusions regarding noncompliance, conditions for granting timeline extensions, writing clear reports.
- **Complaint investigator training delivery methods.** Attendance by staff at annual law conferences (e.g., LRP, Northwest Law Conference, in-state), RRC regional activities, training by contracted experts (state specific content), use of internal trainers or TA providers (e.g., legal counsel).
- **Length/amount of training/TA.** When noted, states indicated typically two days of IDEA/legal training per year; other process training one day per year in some

states and in others part of a 4 hour to one-day periodic (monthly or bi-weekly) investigator meeting and training session.

Sub-Function D2. Hearing Officer Training/TA

- **Needs Assessment.** Assess HO training needs based on evaluation of performance (timelines, quality of hearing decisions/clarity regarding IDEA legal standards); hearing officers with inappropriate extensions or failure to meet timelines.
- **Hearing officer training/TA content.** Federal and State regulations (IDEA), including legal interpretations by Federal and State courts; conduct of hearings (legal processes, timeline expectations, conditions for granting extensions, communications/global skills training, decision writing; specific content training (e.g., behavioral regulations, special education services and supports).
- **Hearing officer training/TA delivery methods.** Attendance by hearing officers at annual law conferences (e.g., LRP, Northwest Law Conference, in-state), new hearing officer training institutes (eastern and western US vendors), training by contracted experts (state specific content), use of internal trainers or TA providers (e.g., legal counsel).
- **Length/amount of training.** In addition to conference participation, in some states training involves two one-day sessions per year in areas of identified need. Several states mention regular meetings of HOs/ALJs with an OAH Presiding Judge to review work, provide clarification/training where needed.

Sub-Function D3. Mediator Training/TA

- **Needs Assessment.** Analyze mediation records, including written agreements and evaluation forms returned by involved parties, to determine professional development needs of mediators.
- **Mediator training/TA content.** Content for training can include: special education legal requirements (IDEA state and federal regulations, program operations); basic and advanced mediation techniques (e.g., caucusing, agreement reaching, consistency in mediation procedures, writing durable agreements, disability issues); ADR techniques.
- **Mediator training/TA delivery methods.** Contracted training from private organizations, state/national conferences, state mediation system experts (e.g., CADRE, Department of Commerce, Department of the Public Advocate); direct mediators to other available resources (e.g., CADRE web).
- **Length/amount of training.** One state requires and makes available at least 30 hours of advanced mediation skills training per year. (More initial training than that is required to *become* a mediator.) Legal training is often provided through an annual conference, with one-day training on IDEA issues.
- **Emerging practice – Resolution Facilitator Training.** Some states are experimenting with offering trained facilitators (in some cases mediators) for resolution meetings in an attempt to increase the likelihood of resolution

agreements. Skills training may focus on mediation, negotiation, and meeting management.

Sub-Function D4. Family/Stakeholder Training

- **Training/TA content.** Content can include: awareness of formal processes (conditions for filing, steps/options, timelines); negotiation and facilitation skills to encourage resolution settlement agreement; mediation skills for participants; communication skills (listening, negotiating, IEP meeting participation); alternative dispute resolution processes; collaborative decision-making by parents and schools; parent/school partnerships.
- **Training/TA delivery methods:**
 - Joint training for parents, school administrators, advocates, other stakeholders;
 - Technical assistance/teleconference calls;
 - Web-streaming/web-based training to reach broader groups of participants;
 - Workshops offered to interested LEAs;
 - PTI/contracted training providers; and
 - Sessions at State special education director's conferences.
- **Length/amount of training.** Two to four hour awareness workshop provided to all LEAs and parent groups;

Function E. Clarification/Examination/Development of Policies and Procedures

(Definition: Clarify, examine and/or develop policies or procedures related to dispute resolution.)

To the extent that states reference policy and guidance to parents and LEAs, they tend to describe policy/procedural changes intended to ensure timely resolution or resolution through less adversarial processes. Activities typically describe the policy/procedure issue (a whole process, or specific element like agreement writing) and the form of dissemination, generally print or electronic documents. The resolution meeting requirements generated interest for some states, although most states were not specific about what they did to regulate or clarify this new process. Several states noted that scheduling resolution session meetings within 15 days was challenging. One state suggested that clarification about OSEP's intent for the resolution process and expectations about Indicator 18 could help reduce uneasiness. The content of policy/procedure adjustments and delivery methods noted by states are arranged by indicator:

Sub-Function E1. Complaints/Indicator 16

- **Procedures for written complaints.** As a part of the Special Education Handbook, brochures were created that clarify process and timelines.

- **Clear communication to complaint participants.** When a complaint is filed, parents/schools receive notice of the importance of timely response to requests for information and information about the complaint process timelines.
- **Guidance for determining extensions.** Description is provided of "extenuating circumstances" that justify extension; includes format for documentation/approval.
- **Streamline submission of written complaints.** Web and paper-based form for complaint filing; procedures for receiving and appointing investigator, early resolution process, etc.

Sub-Function E2. Hearings/Indicator 17

- **Control/limit use of hearing extensions.** Require a copy of all requests for hearing timeline extensions to be submitted to the SEA.
- **For LEA filed requests, set initial hearing date for 20 calendar days from filing.** Presetting hearing dates can help ensure adequate time for the hearing officer to issue decision without extensions.
- **Adopt single tier due process complaint system.** Several states note that they are moving or have moved from a two tier to single tier system.
- **Uniform communication regarding completion of due process hearing activities.** Intended to develop common expectations among Hearing Officers, participants, and stakeholders.

Sub-Function.E3. Resolution Process/Indicator 18

- **Incorporate standard information on resolution meetings and mediation into their introductory and subsequent correspondence with parties.** (Used in states where HOs have a role in resolution meetings.) Intended to encourage resolution options.
- **Resolution meeting/process clarified.** Document developed and disseminated to parents and schools – in print and via web. Sent to parties at filing of any due process complaint.
- **Clarification of hearing officer role in resolution meeting oversight.** In states where HO has a role, functions include communicating with parties (standard letters, etc.), encouraging settlement negotiations prior to hearings, providing resolution session data to the SEA on all cases assigned.
- **Clarification letter sent to parties when DP filing received.** In states where LEA has primary role for resolution session, acknowledges LEA responsibility to offer and coordinate resolution session, or for parties to choose mediation (arranged through SEA). Some states contact LEA at various points throughout the resolution period to see whether parties have scheduled or held resolution session, mutually agreed to waive the resolution meeting, reached agreement, or would like to consent to mediation before beginning the hearing timeline.

Sub-Function E4. Mediation/Indicator 19

- **Due Process Office schedules mediation where parties agree to mediate in lieu of resolution process.** In states where the hearing office has a role in the resolution processes before the hearing timeline starts, mediation is scheduled no later than a certain date (e.g., on or before the 21st day from the receipt of the request).
- **Mediators write the mediation agreements.** The SEA sets standards for agreements that are in full compliance with IDEA and state law. Mediators write the agreements to meet those standards.
- **Mediation agreements are enforceable through the written state complaints process.** Failure to implement can be enforced through the written state complaints process (not just in court).

Function F. Program Development

(Definition: Develop/fund new regional/statewide processes or initiatives.)

States reviewed made very limited reference to “initiatives” but did describe pilot efforts, consolidation of program functions, etc. Examples of initiatives and processes to inform program development include:

- **Consolidate activities for state infrastructure, TA and targeted assistance for Indicators 11, 15, 16, 17, 18, and 19.** Working with CADRE & the RRC to design improvement plan across the areas of general supervision / child find (Indicator 11, initial evaluation timelines), system of general supervision (Indicator 15) and general supervision/dispute resolution (Indicators 16 through 19).
- **Created separate and independent hearing officer training and hearing officer evaluation entities.** These functions were in the same organization. They were separated (by legislative action) to sharpen assessments of HO effectiveness and better target training to needs identified through independent evaluation.
- **Stakeholder roles in program development and improvement.** The Special Education Advisory Committee (SEAC), a SEAC dispute resolution subcommittee or other stakeholder group assists with identification of needs and development of proposals for dispute system program revision and reform.
- **Pilot Projects.** A number of states have instituted pilot efforts to support ADR options (upstream, early resolution processes), such as: IEP facilitation; using a facilitator to improve resolution meeting outcomes; increasing the use of collaborative problem-solving techniques in mediation.

Function G. Collaboration/Coordination

(Definition: Collaborate/coordinate with families and agencies.)

- **Collaboration among complaints management unit, SEA legal division, Parent Training Information (PTI) Centers, Family Empowerment Centers,**

LEAs and advocacy organizations. Organizations worked together to improve dispute resolution and improve program provision in targeted regions. Three year analysis of data reveals 33% reduction in number of complaints in target areas.

- **Memorandum of Understanding/Agreement between Special Education Division and the Hearing System.** Agreement details timelines, expectations for skills of HOs, HO evaluation processes, TA/training supports, the role of the agencies (e.g., SEA and the State Office of Administrative Hearings), etc.
- **Contract with the PTIs to provide dispute resolution training opportunities for parents.** Contract requirement for State funded parent centers includes the goal of promoting the use of mediation and resolution sessions.
- **Collaboration with the PTI and state Protection and Advocacy agencies.** Collaborating in outreach to districts and parents promoting free mediation prior to filing complaint or due process hearing request.

Function H. Evaluation

(Definition: Conduct internal/external evaluation of dispute resolution processes and outcomes.)

The APR descriptions of evaluation of dispute resolution processes differ across states from minimal to fairly extensive. Some evaluation is directed toward system or process performance while a larger theme appears to be dispute resolution practitioner performance. The most frequent use of participant satisfaction data is in mediation. Increasingly, however, states are matching dispute resolution process elements to evaluation of the systems and of dispute resolution practitioners. For hearings and for complaint investigations, tying compliance to the timelines with the practitioner's performance evaluation appears to contribute to meeting timelines. However, many states do not evaluate hearing officers. In particular, participant feedback is not applied in hearing settings because of the judge-like qualities of a hearing officer and the desire to protect and value their perceived neutrality. States are beginning to craft performance evaluation systems for hearing officers that include some participant input, assessment of timeliness, quality of hearing decisions, etc. Examples of program and practitioner evaluation activities include:

Sub-Function H1. Program Evaluation

- **Examine reasons for extensions.** Includes difficulty in contacting families or LEA interviewees, complexity of student needs.
- **Review case by case circumstances.** To determine whether the increase in use of extended timelines has been consistent with the regulations.
- **Analyze noncompliance and barriers to achieving compliance.** The most common problem identified was extended complaints that did not leave sufficient time for getting LEA response AND investigator response and report preparation.
- **Systematic and extensive evaluation of complaints system.** One state attributed its Indicator 16 progress to the following:

- Revised internal procedures to streamline the intake process, requiring only the Director to sign the letters to the LEAs and complainants;
- Revised internal procedures to require the completion of the draft investigation reports two weeks prior to the 60-day timeline;
- Added contracted staff to investigate complaints and manage the Facilitated IEP Program;
- Improved the data collection and management system;
- Assisted LEAs and parents through training activities and improvements to the web site; and
- Provided increased opportunities for LEAs and parents to resolve disputes through the Facilitated IEP and Mediation Programs.
- **Survey reasons for withdrawal of due process complaints.** Summarized and analyzed to determine how issues were addressed.
- **Develop and implement strategies for determining where and why resolution process fails.** Summarized, used for improvement planning; included follow-up with the parties.
- **Outside audit of due process hearing procedures.** Resulted in independent recommendations for improvement.
- **Evaluate mediation process.** What people need to know going in; how clear expectations were in case development; satisfaction with resolution; immediate and 6 months out (durability).

Sub-Function H2. Practitioner Evaluation

- **Survey for all mediation parties.** Anonymous post-mediation evaluation form. Summarized and considered this feedback in improvement planning.
- **Timelines and procedural compliance.** Data collected was used to evaluate hearing officer performance.
- **Apply consequences for HOs that fail to meet timelines.** Several states report such consequences (usually guidance, required training, increased scrutiny). One state reported firing an HO who did not complete hearing decisions on time.
- **Provide HOs with a summary of their activity.** Provide information comparing HOs to overall system performance, including their timeliness.
- **Monitor HO caseloads & timelines to ensure process.** In several states, the SEA provides appropriate remediation to HO with low performance.
- **Evaluate HOs on their monitoring and enforcement of resolution process procedures.** Conducted in those states where HOs have a role in the 30 day resolution process.
- **Provide mediators feedback from satisfaction surveys.** Mediators receive feedback to consider in improving their skills/methods. In a few cases, mediators have been replaced when feedback from participants is consistently critical of mediator performance.

Function I. Increases or Adjustments to FTE

(Definition: Add or reassign FTE at the State level. Assist with the recruitment and retention of LEA staff members who focus on dispute resolution.)

Sub-Function F1. Complaints

The most frequent explanation for failure to meet complaint timelines was lack of sufficient staff. Staffing approaches and information on how staff members are allocated across states differ so much that it is difficult to determine what is required to adequately investigate an average complaint and complete the report. Local conditions, geography, etc., can impact the time demands for on-site visits when required for investigation. Some states appear more likely to conduct on-sites than others. We observe that of our sample states, some of those with the most difficulty in meeting timelines had very high investigator to complaint ratios (45 or 50 complaints per FTE), while states that seemed to be completing complaints on time had from 10 to 30 complaint reports issued per investigator (ratios as low as 10 complaint reports per investigator might suggest these staff have other duties). In one state that described distributed complaint investigation (across 20 or more SEA staff members who do one or two complaint investigations per year each) maintaining timely performance was difficult because of competing priorities for the time of those staff. Because complaint filings can increase or decrease substantially from year to year (in some states by as much as 50%), it is a challenge to allocate staff and use them in an efficient manner. Noted strategies for allocating or adjusting FTE include:

- **Expand use of contractors/outside consultants** (e.g., retired administrators) to conduct investigations. Five to 10 complaints per year per contractor seems typical.
- **Full time personnel assigned to investigate complaints** (systems with 25 or more complaint reports per year).
- **Go outside standard hiring limits to obtain more full time staff.** In one case, an argument was made to the legislature based on timeliness data and two dedicated FTE were added.
- **Use other SEA staff to conduct investigations.** Increased risk of problems in meeting timelines and consistency.
- **Improve efficiencies in other areas.** Increase alternative dispute resolution (ADR), early resolution, LEA self-assessment, for example, so that fewer complaints are filed/investigated and more staff time is available for investigations when needed.
- **Monitoring work flow and complaint activity.** One state noted that it assigns complaint investigators to no more than three active complaints at any one time.

Sub-Function F2. Hearings

States, again, have widely varied approaches to managing hearing systems and to compensating hearing officers. It may be the responsibility of the Special Education

Division to ensure access to due process hearings, but the hearings may be conducted by staff that the SEA controls only at arm's length (e.g., a contracted service) or not directly at all (increasingly by State Offices of Administrative Hearings). Hearing officers may be paid an annual salary, by the case, by the hour, with compensation rates varying widely. The responsibilities hearing officers have also vary, from assignment and duties at the point of filing, including encouraging resolution prior to the hearing, to a focus primarily on the preparation and conduct of an impartial hearing and the writing of a decision. Few strategies were offered for adjusting/allocating FTE in hearing systems to support effective hearing systems. Those offered included:

- **ALJs allocated through a Memorandum of Agreement (MOA) or legislative action can help ensure skilled focus on special education hearings.** Special Education may fund enough ALJs to provide special education hearing capacity, especially in OAH operated systems.
- **Full or part-time hearings coordinator in the SEA.** Monitors hearing processes, timelines, and consults/informs OAH or HOs directly of case status.

Sub-Function F3. Mediation

States may maintain a panel of mediators, or contract for mediation through a mediation center or program, or may support mediation conducted by the same organization that conducts hearings (a state Office of Administrative Hearings and dispute resolution). These differing arrangements impact how states can manage demand for mediators. Since many mediators on state panels work on a case assigned basis, adjustment of mediator capacity may be less complicated than with complaints and due process systems. Example activities of mediation FTE adjustments include:

- **Use volunteer mediators.** This is typical of community mediation programs. Effectiveness will depend on how experienced and knowledgeable volunteer mediators are and on how well they are trained, prepared, and supported.
- **Use paid professional mediators who work in multiple areas.** In addition to special education, professional mediators may work in family mediation, divorce mediation, neighborhood mediation, etc. Mediation skills can be high with such individuals, but capability of managing special education mediation will vary depending on special education program and legal knowledge.
- **Use a limited and select panel or group of mediators who perform mediations regularly.** Mediators who conduct mediations regularly (ten or more a year, perhaps) help ensure that mediator knowledge and skill levels are appropriate and that mediator performance can be effectively evaluated.

Function J. Public Awareness/Outreach

(Definition: Specialized materials, targeted groups and methods of disseminating information on dispute resolution options.)

Web sites are a major information dissemination strategy in many arenas. A CADRE review of dispute resolution information on the web sites of the states included in our APR sample was revealing. There may be a slight relationship between the ease of locating dispute resolution information on the state web site and performance of the state on APR dispute resolution indicators, but it was not compelling. On about half of the web sites reviewed, it appeared unlikely that a parent who did not already know about dispute resolution would be able to locate information about available options. Many State Special Education Divisions have no control over the form of their published web information and decisions about ease of locating dispute resolution information may be out of the control of the Special Education Division. Notable outreach strategies include:

- **Dispute resolution information readily available for parents/stakeholders.** – Several web sites judged most accessible to parents are characterized by:
 - An obvious link to dispute resolution information from Special Education home page
 - “Parent-friendly overview” of DR options, including explanation of processes and timelines, near the top of a dispute resolution page
 - Online or downloadable forms for filing a written complaint, a due process complaint, or for requesting mediation.
 - Upstream/ADR processes and resources clearly described and their use encouraged
 - Support contacts (PTI, SEA dispute resolution consultants) clearly listed.
- **Results of hearing decisions redacted, summarized, and published on the web.** (Public availability of this information is a requirement under IDEA, although the inclusion of summaries and analyses across cases, as some states provide, is not required).
- **Results of complaints redacted, summarized, and published on the web.** There is no requirement to publish complaint summaries, although some states do as a companion set of information to hearing decision summaries.
- **Information concerning the effectiveness of the resolution meeting process.** One state is publishing evaluation information about the contribution the resolution process makes to settling due process disputes to encourage its use when appropriate.
- **Focus information dissemination on mediation and ADR strategies.** For some states, this is a major effort aimed at redirecting dispute resolution toward more collaborative methods. For example, a brochure may be sent to all parties whenever a due process complaint is filed, the state publishes a newsletter specifically highlighting mediation option/successes, personal contact/communications with parties to encourage ADR/mediation, collaboration with PTI, Protection and Advocacy [P&A] system to encourage mediation (joint presentations and parent-to-parent counseling). Two states mentioned this kind of major public outreach or specific contact with parents to explain the benefits of mediation.

Function K. Upstream or Early Resolution Processes

(Definition: Support activities beyond the letter of the law to meet its intent, designed to resolve conflict through less adversarial means and to reduce opportunities for conflict.)

There seems to be a general trend towards encouraging early resolution in a variety of ways. Some of these are more formal than others and not all are under the auspices of the SEA. Examples of support for upstream dispute resolution processes include:

- **IEP Facilitation.** A number of states mention IEP facilitation pilots or initiatives using both internal and external facilitators. The intent is to create better communication within the IEP meeting process that can resolve problems early and avoid the development of disputes. The effectiveness of facilitation efforts are still to be fully assessed and are plagued with the difficulties present in demonstrating any preventative effect.
- **One state awards ADR grants to regional entities.** Grants for efforts focused on reducing the number of complaints by such means as: solutions panels; IEP facilitation; resource parents; early case review; IEP coaches; local mediation; TA/expert teams; independent child advocates; placement specialists; joint training with PTIs to train parents and educators on effective strategies for reaching agreement in resolution sessions. Some evaluations of these pilot efforts show positive effects on producing more collaborative problem solving between parents and schools.
- **Another state supports statewide ADR processes.** These include a parent helpline; IEP facilitation; dispute resolution skills training; resolution meeting trainings; pilot of resolution facilitators; training and support for solutions panels. Evaluations of these processes show some promising effects.
- **Implementation of a web-based system for monitoring/self-assessment by schools.** Again, details from one state: the system's emphasis on self-assessment is intended to help LEAs be more proactive in identifying their own problems and reducing the use of more formal dispute resolution.
- **Early Written Complaint Resolution.** Several states mention processes of early resolution of state written complaints without describing it in detail. This may involve a ten-day period allowed for the parties to resolve the issues when a written complaint is filed. If "early resolution" is achieved, a signed statement is submitted to the SEA to show that the matter is resolved.
- **Workshops for LEAs on mediation, negotiation, and facilitation techniques.** Several states offer or are planning these skill building efforts that are intended to equip LEAs with better skills to resolve due process complaints through resolution meetings or other settlement negotiations.

Function L. Stakeholder Involvement

(Definition: Engage stakeholders in the review, evaluation, and implementation of dispute resolution practices; stakeholders recommend improvements to the SEA or SEAC.)

The words “stakeholder” or “advisory” come up in 10 of the 23 state APRs reviewed (the result of word searches on the entire APR text). Most APRs have a beginning section in which the requirement that the SEAC be involved in the SPP/APR process is acknowledged (the SEAC may have input or review or both), but there is no mention in most of the states reviewed of any active role by stakeholders in dispute resolution activities. This may not accurately reflect stakeholder involvement in states’ dispute resolution processes. Examples of some activities involving stakeholders:

- **Stakeholders provide advice, review of indicator progress, assist target setting, review and evaluation of DR data.** Several states describe stakeholder involvement in these terms. The stakeholders may be a sub-group of the state advisory panel or a specialized advisory group with specific interest in DR.
- **Stakeholders are targeted for receipt of information about DR and they are active participants in promoting DR activities in some states.** For some states, a partnership of the PTI, SEA, and LEA administrator group jointly support effective dispute resolution.

CONCLUSION

CADRE believes that the summary of activities provided in this chapter is a first step in describing the full range of activities that states may undertake in order to implement capable dispute resolution systems. These systems are complex, involving at least the four required dispute resolution processes. For many states they also include other early, alternative dispute resolution options. For due process hearings alone, there are at least 17 identifiable steps from the point of filing a due process complaint and the conduct of a hearing and issuance of decision. Improving these systems will require systematic and extended work, sensitive to the state contexts in which they are to be realized.

In this document we have begun to identify the organizational activities and supports states have in place to manage their dispute resolution systems. States are now going well beyond the issues of compliance with Indicator 16 (state written complaint) and Indicator 17 (due process complaint and hearing) timelines. Most states have reached or are very near compliance with those requirements. The challenges now include, at least:

- **To improve the specificity and definitions of the functions and activities of capable dispute resolution systems.** We hope we have begun this process with the detailed functions and activities in this analysis. CADRE’s Dispute Resolution System Integration and Performance Enhancement (DR SIPE) work with states (see <http://www.directionservice.org/cadre/walter.cfm>) will be informed by the information uncovered in the development of this chapter. The continuing engagement of states will firmly ground this work in application.
- **To evaluate and explore how to improve the quality and durability of resolutions.** Do “dispute resolutions” produce FAPE? Or, are the “issues

resolved” later recycled through another DR process? These are extremely important questions from an efficiency standpoint, if nothing else. A few states have begun to explore the durability of mediation agreements, written state complaint report corrective actions, and hearing decisions.

- **To identify “what works” in these processes and share that knowledge across states.** CADRE believes strongly that interactions among states will improve our common understanding of DR systems, what is necessary to manage them well, what may differ as a result of state context and size, and what kinds of interventions might result in improved DR system performance. We hope sections of this document might serve as a stimulus for discussions among DR practitioners in and across states about how to improve practice.

APPENDIX A: A DESCRIPTION OF METHODOLOGY:

Methodology is important to understanding how CADRE has assembled the information in this chapter. We purposely slighted methodology issues at the beginning of this chapter to get to the meat of the content with enough context for the reader to understand our purpose. This appendix outlines the details of sample selection, contextual issues in understanding state data systems, limitations of the data for the analysis, etc.

Sample Selection

CADRE selected three groups of states based on the past four years of performance data (Table 7, 2003-04 through 2006-07):

- “Consistent” Performance – States that have demonstrated compliance (100% on Indicator 16 or 17) for the past three years or that have had mediation agreement rates (Indicator 19) near 75% - 85% for three or four years;
- “Improved” Performance – States that have moved from 2 or 3 years of noncompliance to at least “substantial compliance” (more than 95% complaints or hearings on time), or that have moved from low mediation agreement rates to rates of nearer the 75% to 85% range; and
- “Inconsistent” Performance – States that have demonstrated noncompliance and variable/poor indicator performance.

The profiles in aggregate of the 23 states in the sample across these performance categories for the three indicators are displayed in Table A1. Each of the 23 states is rated for performance level over the past three to four years for each indicator:

Table A1: Number of States at Differing Performance Levels by Indicator

Performance Level	Indicator 16	Indicator 17	Indicator 19
Consistent/Acceptable	9	8	14
Improved	6	12	3
Inconsistent	8	3	6
Total # States	23	23	23

Thirteen (13) of the selected states had at least one “inconsistent” rating for one or more indicators. Two states had inconsistent ratings for two indicators. No state was rated inconsistent across all three indicators. The improvement in performance evident in some states for the 2006-07 reporting period (FFY 2006 APR) resulted in a number of states moving into the “improved” category (that is, they had demonstrated noncompliance, but improved to compliance in either or both Indicators 16 and 17). One state improved to compliance or acceptable performance in all three indicators.

Two reviewers examined and coded each state’s APR. Improvement strategies and any other notation by the state about their activities (e.g., in introductory sections, explanations of slippage or progress) to these 12 functions. The reviewers tried not just

to categorize the improvement strategies, but to describe as fully as possible what the states are doing in each activity area. This required, in some cases, reference back to the SPPs. The two reviews were combined for a single summary of each state.

A Secondary Source: State Web Sites

Because the web site is a frequently cited vehicle for public awareness and should contain information on alternative dispute resolution practices in each state, we also conducted a review of all the web sites for these states. Beginning from the Special Education home page for each state, we asked these questions:

- Is there an obvious link to dispute resolution information from Special Education home page?
- What does it take to find DR from front page?
- Is there a “parent overview” of DR options (not just rights brochure)?
- Is there a form (online or downloadable) for filing a written state complaint?
- Is there a form (online or downloadable) for filing a due process complaint?
- Is there any parent oriented resolution process/meeting/agreement guidance?
- Is there a form (online or downloadable) for requesting mediation?
- Are other upstream activities suggested?
- Other upstream resources included/described?
- What do searches of the site return for due process, complaints, mediation?
- What do searches of the site return for alternative dispute resolution?
- Could a parent ask for mediation without much assistance?
- Could a parent file a due process complaint without much assistance?
- Could a parent file a written state complaint without much assistance?

While we found excellent examples of web sites that provide very direct and parent friendly access to dispute resolution information, we also found sites where only people who already have sophisticated knowledge of dispute resolution options, parent rights, search terms, web site navigation, etc., would ever be able to find the information. CADRE has had interactions with a number of states that would like to overcome limitations of their web sites where site control over form, content, and structure of the information is held by another office. We realize that the condition of the web information is not always under the control of the special education division in a state. Nevertheless, we use the results of this examination to suggest some standards for the availability of web-based information on dispute resolution. Even where the SEA lacks control over web display, there may be some “work-arounds” for making web-based information more parent/family friendly.

Context Matters

States differ widely in how they are organized to support dispute resolution, use of personnel, whether hearings and mediation (in particular) are internal to the SEA or contracted or operated by external systems, and so on. These contextual differences will have an impact on what activities a state carries out to achieve a particular function.

State size and level of dispute resolution activity have a major impact on the magnitude and complexity of these activities. Table A2 displays the numbers of most active and least active states/entities (“states” refers to states and entities nationally) by dispute resolution type.

Table A2: Most and Least Active States by Dispute Resolution Type (2005-06)

DR Type (# filed)	# of most active “states” that account for 75% of all national activity	# of least active “states” that account for 2% of all national activity
Complaint Filings (5,897)	16	17
Mediations Held (4,153)	11	21
Hearing Requests (19,042)	5	28

Note the “Hearings Requested” line in this table: Seventy-five percent (75%) of the 19,042 due process complaints (hearing requests) filed in 2005-06 were in just five states. For written state complaints in the same year, 75% were filed in just 16 states and for mediations held, 11 states accounted for 75% of the activity. The least active states account for two percent of all activity: 28 states for hearing requests, 21 states for mediation activity and 17 states for written complaints. Clearly, the activities undertaken by the most and least active states will differ substantially, even though a given event (e.g., a written state complaint investigation and report) may be an essentially similar activity in any state. The activity descriptions provided (see below) for each function reflect some but not all of these contextual differences.

For written state complaints, investigators may be full time, well-versed experts specializing in “complaint investigations,” or they may be program staff from elsewhere in the SEA and assigned once or twice a year to conduct complaint investigations. Some states make extensive use of retired school administrators on contract to conduct complaint investigations and prepare reports. The most common explanation for failure to meet timelines under Indicator 16 was staffing issues (e.g., individual circumstance for a given complaints investigator, inadequate staffing and hiring freezes, unpredicted vacancies). When states experience swings in the level of complaint activity, it can be hard to match demand to expertise. In addition, some states have trouble making the case for additional investigators when needed. The APR and failure to meet timelines for this indicator has provided a rationale, at least for some states, to remedy this.

Completing hearings on time (Indicator 17) is only partly a function of clear direction and guidance. States have increasingly moved to single tier hearing systems and more states seem to be utilizing (either by choice or through directives) the State Office of Administrative Hearings (OAH). These hearings systems may be located in another agency (Governor’s Executive Branch, or the Commerce Department). The skills of full time OAH hearing officers may not be as attuned to IDEA requirements as they could be. The SEA may have minimal control over the operation of these systems, even though they have the legal responsibility to ensure a competent hearing system. SEAs have used various strategies (e.g., memorandum of agreement, the SEA paying directly

for specialized HOs) to try to ensure that hearing officers are knowledgeable about special education issues, well-versed in IDEA law, regulation and legal precedents, and fully aware of the importance of timelines.

Resolution settlement agreement rates (Indicator 18) likewise present variability in state orientation to how this work is managed and by whom. In some states, the hearing officer (HO) is appointed as soon as a due process complaint is filed. The HO monitors the resolution process, maintains ongoing communication with both parties through the 30 day resolution period, and may review settlement agreements that result in the withdrawal of the hearing request. In other states, the resolution process is left solely to the LEAs, with regulatory guidance. On the 30th day, if a resolution has not been reached, the hearing officer is assigned.

Mediation agreements rates, Indicator 19, also may reflect wide variation in practice, oversight, trust among participants, etc., in states. In some states, mediation services are run through professional mediation organizations or university-based mediation programs, while in others mediators are volunteers with varied experience and training. The predominant model among states is an SEA managed panel of privately contacted mediators. Some mediators operate in many arenas and have intensive, relevant practice in a variety of settings. Other mediators do special education mediation only. Some mediators do dozens of mediations a year while other conduct mediation relatively infrequently.

Limitations of the Data

States differ in how they conceive of and report their improvement activities. The APRs reviewed for this chapter ranged from five pages (with most of the space taken up by the APR reporting template) to 19 pages. Many reports contain very little information on actual DR system functions.

Differences in the level of detail found in activity descriptions

The variability in detail provided by different states makes it impossible, using the APRs as the source, to obtain comparable information across states on how their systems actually operate. For some states, activities are described almost telegraphically (e.g., “ongoing training”). For other states, details of the activity may be far more explicit (e.g., track complaints activity, as applicable, for dates received, early resolution period, additional information requested from complainant/school, responses received, interviews, draft report, report review, final report approval, transmission to complainant and school).

Differences in the number of activities referenced

For some states, all or nearly all 12 functions were referenced in improvement activities. For other states, as few as three areas (most often TA/training, improving administration, and evaluation) were described. In some of the states that have

struggled to meet compliance targets consistently, more strategies are referenced across the four indicators, suggesting perhaps a wide ranging attempt to improve overall system activities. When fewer functions were referenced, some states may have implied the existence of other functions. For example, “increase monitoring of dispute resolution data to track case load and adjust personnel allocation as needed” describes activities in administration/monitoring and FTE increase/adjustment, but it also implies the existence a dispute resolution data system, albeit not one that is targeted for “improvement.”

Despite the unusual methodology, contextual influences and difficulty in obtaining comparable information across states, CADRE considers this first targeted analysis of selected states to be an important foothold in defining, assessing and confirming what works in states’ efforts to provide effective dispute resolution systems.